

876—4.9(17A) Appearance and responses, pleading and motions. Responses to pleadings and motions shall be made as follows:

4.9(1) Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent. The appearance shall include the E-mail address and the fax number of the respondent, if available, if the respondent is not represented by counsel. The caption of an answer shall disclose the file number of the compliance file in which the first report of injury was filed for the injury that is alleged in the original notice and petition.

4.9(2) Motions. Motions attacking a pleading must be served before responding to a pleading or, if no responsive pleading is required, upon motion made by a party within 20 days after the service of the pleading on such party.

4.9(3) Pleading. Rescinded IAB 11/23/05, effective 1/1/06.

4.9(4) Time after motions attacking pleadings and special appearances. If a motion attacking a pleading is so disposed of as to require further pleading, such further pleading shall be served within ten days after notice of the action of the workers' compensation commissioner or deputy workers' compensation commissioner. If the further pleading requires a response, the response shall be filed within ten days after service of the further pleading.

4.9(5) Amendments to pleadings. A party may amend a pleading as a matter of course at any time before the party's discovery is closed, or if no order is entered closing the party's discovery, at any time before the case is assigned for hearing. Otherwise, a party may amend a pleading only by leave of the workers' compensation commissioner or deputy workers' compensation commissioner or by written consent of the adverse party. Leave to amend, including leave to amend to conform to proof, shall be freely given when justice so requires.

4.9(6) Form, submission and ruling on motions. All motions, including pre-answer motions, motions for summary judgment and applications for adjudication of law points, shall have appended to them a concise memorandum brief and argument. All motions and applications for adjudication of law points except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions and applications for adjudication of law points shall have appended to them a concise memorandum brief and argument, and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, application or resistance.

An order may be entered consolidating any motion for ruling with hearing of the contested case. Any party desiring a ruling on a motion prior to hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion shall be deemed approved if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion. No order granting the motion will be filed by the workers' compensation commissioner. As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.

4.9(8) Withdrawal of counsel. Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by delivering written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, within ten days following the date the notice was mailed or personally delivered to the

client. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

4.9(9) *Requests for default.* Requests or motions for default shall be as provided in Iowa Rules of Civil Procedure 1.971 to 1.977 except that entry of default shall be by order of the workers' compensation commissioner or a deputy workers' compensation commissioner.

This rule is intended to implement the provisions of Iowa Code section 17A.12.